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ABSTRACT

This paper contains transcripts of two speeches given by the chairperson of the Federal Communications Commission (FCC) outlining his philosophy concerning the function of that agency and its relationship to the telecommunications industry. The first transcript discusses the primary management objectives identified by the FCC as follows: (1) to create an unregulated, competitive marketplace environment for the development of telecommunications; (2) to eliminate unnecessary regulations and policies; (3) to provide service to the public in the most efficient, expeditious manner possible; (4) to promote the coordination and planning of international communication that assures the vital interests of the American public in commerce, defense, and foreign policy; and (5) to eliminate government action that infringes on the freedom of speech and the press. The second transcript discusses the need for eliminating excessive regulation of the broadcast industry, specifically those regulations that limit the development of program material for new media, such as cable television; limit the industry's ability to diversify by expanding into ownership of new technologies; require the strict examination of a licensee's character and actions; and restrict the airing of viewpoints as the broadcaster sees fit. (FL)

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REMARKS OF MARK S. FOWLER

CHAIRMAN FEDERAL COMMUNICATIONS COMMISSION

BEFORE THE

(1) International Communications Association
Telecommunications Conference '81
Washington Hilton, Washington, D.C.
June 1, 1981

(2) Oregon Association of Broadcasters
Newport, Oregon
June 12, 1981

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REMARKS OF
MARK S. FOWLER
CHAIRMAN
FEDERAL COMMUNICATIONS COMMISSION

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BEFORE THE

INTERNATIONAL COMMUNICATIONS ASSOCIATION
TELECOMMUNICATIONS CONFERENCE '81
WASHINGTON HILTON, WASHINGTON, D.C.
JUNE 1, 1981

Thank you very much for that gracious introduction and, of course, for your thoughtful invitation to deliver the keynote address at this your 34th annual conference. I couldn't help jibing my good friend Charlie Wick, who has been named by President Reagan to direct the International Communications Agency, that I would be addressing the "ICA" before he would, and the real ICA at that. The government has been taking things from you for so long, it finally committed the ultimate indignity -- it took from you your good name.

Given your critical function in providing the telecommunications backbone for the nation's economic anatomy, you could probably retaliate and -- with a great deal of justification -- call yourselves the Voice of America; for in many important respects, that's what you are. Although you speak in many tongues -- voice, data, facsimile and even digital bursts -- if your voice is ever stilled, the economy of this country would suffer something roughly equivalent to brain death. One regrettable irony is that the communications functions of your parent industries do not always occupy a high profile in the

public eye or, perhaps, have the "sex appeal" of some of the mass communications services with whom you cohabit the radio spectrum.

And yet, if consumers and consumer activists consciously paused to realize that it is you who provide commonplace, but invaluable, services such as the instantaneous hotel and transportation arrangements and ticket reservations we have come to expect, or the lightning exchange of banking or commercial or medical intelligence which the American public has come to take for granted over the last few years, I wonder how many would remain as apparently indifferent to your role. So many of the tremendous services provided by the communications arms of our economic enterprises, I believe, have as great or greater an impact on our daily lives than the more conspicuous broadcast and cable TV industries which receive a great share of public attention. For example, how many members of the public ever stop to think that the food and drugs that arrive on dealers' shelves, or the new cars on dealers' lots, or the replacement parts that arrive miraculously -- sometimes overnight -- are the direct result of the sophisticated inventory control and transportation monitoring systems that are now part of a brilliantly conceived and applied communications system: a system that saves time, scarce energy resources, and cost, and which provides the necessities and conveniences that reflect the American standard of living.

These things are the result of the foresight, the planning, the dedication and the prodigious labors of the members

of the ICA. And I want you to know that while I am Chairman of the FCC, the needs and interests of this group will play second fiddle to no other segment of the telecommunications community. I am keenly aware of your vital role in our society, even if you don't have the "jiggle" of "Three's Company" or "WKRP Cincinnati."

It is because I wish the FCC to have a constructive, synergistic relationship with the industries we regulate and the public we affect that I would like to make clear to you the basic operational and functional tenets under which I and my colleagues on the Commission intend to serve over the coming years.

First, and with the full and -- I trust -- enthusiastic support of the other members of the Commission, I intend to take a page from your book and institute for the first time a Management By Objectives program at the FCC. It may come as a surprise, even a shock, to most of you whose companies long ago established some form of MBO program that government in general has not adopted the systematic management techniques without which the "Fortune 500" would have been a competitive race where only losers ran. Any organization -- private or public -- in my view cannot begin to proceed effectively with substantive matters until it establishes -- at every level -- a clearly articulated set of objectives and criteria by which to measure the attainment of them.

Let me briefly enunciate the primary management objectives we at the Federal Communications Commission have identified which will serve as our Polaris as we navigate the

regulatory seas and also offer a brief explanation of their derivation.

Objective One is:

> To create, to the maximum extent possible, an unregulated, competitive marketplace environment for the development of telecommunications.

I believe deeply that consumer choice and entrepreneurial initiatives must be emphasized over pervasive government control and direction in the marketplace. I have always felt that there was something quite arrogant and pedantic about a government attitude which holds that it knows your problems and their solutions better than you do. Our task, as I see it, is to regulate -- not to operate. The Commission's job is not to invent the wheel, but simply let it spin. It is unfortunate that, although the FCC has taken some very commendable steps towards marketplace control, it has only scratched the surface. Marketplace economics is no longer simply a conservative battle cry: it has reached the stage of a vigorous public mandate. That is not to say that some regulation is not necessary. I am neither a nihilist nor an anarchist. But as the Washington Post columnist George F. Will succinctly states, government which is "omnipresent, omniprovident and hyperactive" has been discredited and rejected. Mr. Will also notes correctly that the appropriate regulatory role of

government is that of "administrators of orderly markets" and our own management objective number one at the FCC will be to regulate consistent with that premise.

Objective Two is:

To eliminate unnecessary regulations and policies.

We must junk, trash, and discard rules, regulations and policies that really have no discernible public benefit as compared to their costs -- costs in terms of the agency administering them and cost to the economy. Because each time we visit a cost on an industry, the American consumer will pay that flow-through cost. I was impressed with a public poll in the June 1st issue of Time magazine showing that close to 65% of the American public wanted the government to abate its regulatory stranglehold, and 70% wanted government out of their lives. There are rules, regulations, policies and programs at the Commission that I believe are pointless, anachronistic, harmful or unwise in the first instance. We must rid ourselves of these programs. We do not have the personnel to handle the work required by out-moded rules -- especially in view of the tremendous new tasks that lay before us. We must reallocate our own resources to new areas where the demand is.

Objective Three is:

To provide service to the public in the most efficient, expeditious manner possible.

I believe that the efficiency and technological expertise of the organizations and individuals engaged in the telecommunications industry can -- no, must -- be matched by the

agency that regulates those groups. Six years is too long to wait for a broadcast license. Six months is too long to wait for an aeronautical frequency. Six days is too long to wait for a response to a telephone call. And six minutes is wasted if they are spent on filling out needless paperwork to send to this agency.

I believe that the FCC itself is in competition: competition not only with other regulatory agencies, but with other private service organizations as well. The American public compares us every day to operations in the private sector. Are phone calls returned? Can they get information rapidly and efficiently? Is it courteous? Is it prompt? Are necessary files and records available? I believe that the FCC can and will become an efficient and business-like establishment -- one that truly serves the people. We will utilize the talent within the agency -- those that want to work. We will provide a different leadership approach and, I hope, present a model of regulatory efficiency. Management is the key to making this metamorphosis occur. And we are committed to installing effective management at the FCC.

Objective Four is:

> To promote the coordination and planning of international communications which assures the vital interests of the American public in commerce, defense and foreign policy.

International communications today has made our planet almost as small as a neighborhood. This management objective -- and one I know that this Association is particularly interested

in -- is designed to enhance our ability to protect the American public's interests worldwide in the area of telecommunications policy. The results sought by the implementation of this objective include enhancing international trade in telecommunications equipment, improving the transborder information flow and, most importantly, accommodating the present mandate from Congress that the FCC coordinate the timely planning of the United States' position at international communications conferences.

We will place a high priority on working with Congress, the Executive Branch and the private sector to accomplish this goal. Indeed, I have already moved to establish an office of international coordination that will report directly to my office and whose task it will be to establish and maintain an alliance among the various governmental agencies and the affected industries. In addition, this office will be the focal point at the Commission for organizing and planning for the agency's participation in those international conferences.

Objective Five is:

To eliminate government action that infringes the freedom of speech and the press.

Our agency regulates a very unique commerce, a commerce in communications; not houses, not chairs, not rugs, not shoes, but the means to distribute our most treasured resource -- ideas. I am particularly sensitive to the potential the agency possesses for the overbroad use of its power. Technological developments in the telecommunications industry are proceeding at

such a rapid pace that many of the former definitions of services are becoming blurred. This commingling of service definitions may permit the subtle transfer of Commission oversight, perhaps validly meant for one service, to another service. Your industry is obviously well aware of this phenomenon. The First Amendment guarantees our right to communicate freely and to forbear from making subjective value judgments on the content of the message. And the Supreme Court has recently affirmed that protection applies to commercial speech. This is in the interest of all consumers. All of our regulatory actions must be infused with particular concern that we appropriately balance the First Amendment rights of the American people as the intended beneficiaries of our regulation.

There you have it: my cards are on the table, face up. We seek, and we ask no more, than to be measured fairly on how successfully we achieve these management objectives. We expect to be measured by you and we expect to measure ourselves; and I assure you that I may be our harshest critic. The American people who elected the current administration which placed me in the FCC chair want change and -- maybe more importantly -- want accountability. The objectives we have stated are our challenge, our roadmap, and our destination.

I know that I and members of the ICA will have opportunities to meet again, perhaps collectively and perhaps individually as we work in our respective interests.. It is especially gratifying that one of my first opportunities as Chairman has been to interact with a consumer group such as yours

because, too often, regulatory agencies have been said to be "captives" of the industries they regulate. Interaction with groups such as the ICA give us another view, another dimension, on our role in the communications universe. Through the ICA, and its effective voice for its own customers -- the American consumer -- we can help to assure that the FCC and the service providers are responsible and responsive to the nation's telecommunications needs.

Thank you very much.

Remarks of
Mark S. Fowler
Chairman
Federal Communications Commission

001511

Before the

Oregon Association of Broadcasters
Newport, Oregon
June 12, 1981

I am delighted to be with you at your annual convention. As some of you may know, this is my first address to a broadcast group since becoming chairman of the Federal Communications Commission.

While you and I work at opposite ends of this great country, we in Washington are surrounded with a condition that contributes to the unique charm of this state. I refer, of course, to fog. Now in Oregon, fog is a balm, sometimes a soupy balm, but a balm nonetheless. It calms the environment, socthes its inhabitants, and makes things grow.

The fog in Washington is different. For I refer to indoor fog, one that obscures the environment, clouds thinking, and prevents things from growing. It is a most conducive atmosphere in which to cultivate, along with all sorts of funguses, a bureaucracy. In fact, production has been so plentiful that we have been exporting bushels of paperwork for decades.

I believe that one clear message of the 1980 elections was this: dispel this fog, the pervading environment in Washington that induces not better government but bigger government. I view my job at the Federal Communications Commission as an important part of carrying out this mandate for a leaner, less intrusive

federal presence throughout this country. In this effort, we at the Commission intend to cooperate fully with the Congress in its efforts to modernize the Communications Act.

Like the great Lewis and Clark who explored the Oregon territory more than a century ago, we in Washington have a similar mission. We must hack through the dense regulatory underbrush transplanted from the 19th century and try to create order from chaos. For the laws which to this day guide the Commission derive essentially from the same laws that chartered, in 1887, the Interstate Commerce Commission. Whatever the validity of those regulatory notions in the age of the buckboard and the waltz, their relevance must be questioned in the age of minicam and microwave.

You and I both know, however, that announcing that we are going to cut through the regulatory underbrush is much easier to say than to do. When I say the Commission will unregulate, I am making a promise I intend to keep. I and my fellow Commissioners have established "unregulation" as a primary objective to be vigorously pursued in the months to come.

Now, what does this unregulation process mean to you in radio and television? Before coming on the Commission I reviewed the legislative history of the Communications Act. In doing so, it becomes easy to see why broadcasting was so trussed-up in statutory thongs by the Congress.

You may recall the Greek legend of Prometheus who gave the world fire, the symbol for enlightening the masses. In return, the angry gods tied him to a rock. Well, broadcasting was, and

is, the "fire" of our own era. The legislative history of the 1934 Act reveals that the Congress at that time regarded you with the awe, suspicion, and apprehension that describes how ancient gods were supposed to have viewed Prometheus. Radio was an unknown force, with the power to light the lives of people like nothing that had come before. Even broadcasters knew that radio was both science and illusion and talked about reaching their audiences "through the magic of radio."

Even now, when people know that -- like the wondrous facade of the Wizard of Oz -- radio and television are made possible by somebody turning knobs and pulling levers behind the scene, you are still regarded with the timorous fascination that resulted in your regulatory confinement nearly 50 years ago. The evidence of this phenonemon is attested to by the bulky Commission rules affecting your operation, and the thousands of tons of paper filed with us each year by your industry.

While deregulation has caught up to almost all the major industries that were harnessed by the "Alphabet Agencies" -- the FCC, the FTC, the CAB, and so on -- broadcasting has remained a conspicuous exception. In the last few years we have seen deregulation of airlines, oil and gas, and trucking industries. The FCC itself has substantially deregulated some common carrier services, and cable TV, and even CB radio. But as for broadcasting the FCC remains the last of the New Deal dinosaurs. There must come a time that the FCC catches up to the realities of your industry and eliminates regulations that no longer have valid purposes.

But how did we develop the system of strict broadcast regulation we have today?

The most widely expressed theory for pervasive broadcast regulation is "spectrum scarcity." Employing the indisputable physical fact that the frequencies available for broadcasting are limited, it was argued that regulation is required because of limited entry. As some put it, "not everybody who wants to broadcast can broadcast."

But let us examine that theory more closely: how is entry into broadcasting any more limited than entry into other commercial enterprises? The fact is that anybody who has the capital and the drive will get into broadcasting the way most people get into any business, the way many of you entered: they can buy in. It takes the same resources to get into broadcasting that it takes to launch any business -- imagination, capital, and entrepreneurial courage. The scarcity argument may have had more weight when there were only a few hundred broadcast stations serving the whole nation. But it has little validity today.

The FCC's Radio Deregulation decision recognized this situation in rejecting the scarcity argument for the AM and FM services. The same basic premises that led to the recent decision to begin deregulation of radio also apply to television. In addition to new UHF stations, broadband technologies like cable and other video services dramatically have undermined the case for regulating in the name of scarcity. Regulating over-the-air broadcasters on the premise that an audience can get programming only from the one source,

of video options, broadcast and nonbroadcast alike, is like stringing buoys in a fish pond to keep the trout from swimming from one end to the other.

This is particularly true in light of the explosion in the number of producers and consumers of video software. There are many new providers of software services who are readily entering a basically unregulated video delivery market. Video distribution in the future will depend on the expected program appeal -- from the Super Bowl's vast audience to more narrowly cast cultural or instructional programs that may be appropriate only for disc or cassette. This is a marketplace worlds away from the "scarcity" of the past.

And there have been other doctrines advanced in the name of broadcast super-regulation. Some claim that "limited entry" gives you a "monopoly" over your frequency. Because of that "monopoly," which presumably enables you all to reap unimaginable profits, you must be regulated.

As many of you know, I worked in radio before entering the practice of law. I know the challenge of meeting payrolls, keeping up towers, and trying to find the audiences that will support it all. While broadcasters are often viewed as majestic lords plucking the golden apples in their gardens of Shalimar, the truth is that most broadcasters are small business men and women who are mightily pleased if they can harvest a few radishes from their victory gardens.

It is hard work, work that requires ingenuity and effort to sell 30 seconds worth of an intangible commodity called "time" to

a car dealer in Medford, or a furniture store in Corvallis, or a druggist in McMinnville. And while you are out there selling this rather amorphous product, you must compete with other broadcasters down the block trying to do the same. And you must compete with every leisure time activity known to man, from bowling to bingo.

The notion of the broadcaster as some kind of monopolist to me is sophistry, sophistry born of plain ignorance of what most of you do during most of your working hours.

In my mind, it is time for fresh thinking, even radical thinking, when it comes to broadcasting. You in radio have seen the new approach. In radio deregulation, the Commission prudently has begun to withdraw itself from areas that no longer require its attention. These efforts must continue. Moreover, I believe that we must now move on to television. Deregulation of television will be an important theme of my Chairmanship. The technology bids us to pursue it, and the cost of continued regulation impels us as well.

At the heart of broadcast regulation is the "public interest" standard. The many coats of conceptual paint that have been slathered on the term down through the years have hampered our ability to see clearly what the "public interest" in broadcast regulation really is. Assumptions, programs, and policies have grown thick over this basic concept.

A primary goal of the Commission in the months to come will be to strip away the layers of rules, policies, and programs that now encrust the basic "public interest" concept. The new age of

A primary goal of the Commission in the months to come will be to strip away the layers of rules, policies, and programs that now encrust the basic "public interest" concept. The new age of alternative communications media -- cable television, MDS, STV, video discs and cassettes and perhaps DBS -- clearly make some of these rules and policies as anachronistic as the vacuum radio tube. But our scrutiny of the broadcasting rules will not begin and end with those rendered obsolete by new technologies. Many rules have simply lost what usefulness they may have had because of the changes in American society that the passage of time has wrought. But many others, quite frankly, were ill-advised to begin with.

Top to bottom, we will take a look at each regulation imposed on broadcasters and ask, frankly, candidly, what would happen to the world if this regulation were eliminated? Does the regulation perform a function best undertaken by the regulators or by the industry? Do consumers really get enough back from this requirement to outweigh its costs on business and on the American public?

If this sounds radical to you, then you are hearing it exactly right. The historic role of the Commission, a grand Poo-Bah of the Potomac determining what kinds of programs a broadcaster must air, must change. And it will change. Technology has already undermined it. Neither logic nor experience any more supports it. And the American taxpayer should no longer have to pay for it.

will help us by giving you more freedom to operate as any other business does.

I would be misleading you if I told you that we will be transferring the regulatory apparatus from your industry to another. We will also examine the rules and policies in other areas that have in the past insulated you from feeling the effects of marketplace competition. Over-the-air television has an important role to play in delivering video services in the future. So do other technologies. I want each technology to have a fair chance to offer services to the public. Marketplace skills, not massive regulation, should determine your future.

As an industry you are strong. As a communications medium you play an important role in American society. You are where you are today because you have adapted to changing times. The Broadcasting industry has turned the American people into witnessess of the great events of our time. You have helped us to think deeply about the problems of our lives and our society. From time to time you have helped us merrily to escape from them in a much needed way.

You have performed magnificently considering the miasma of past regulation. You doubtlessly will perform as well, or better, without it.

But let me be specific. I question whether there is any valid purpose served by structural rules that limit your ability to develop programming material for use by new media, like cable television, which cry out for more programming to provide to the American people. I do not believe that past players, players

But let me be specific. I question whether there is any valid purpose served by structural rules that limit your ability to develop programming material for use by new media, like cable television, which cry out for more programming to provide to the American people. I do not believe that past players, players with impressive records and innovative plans, should be arbitrarily excluded from new markets.

And I question structural rules that, based on a world that existed two or more decades ago, limit your ability to diversify by expanding into ownership of new technologies. I believe that anticompetitive problems, should they arise, may be more appropriately and adequately handled by other government agencies that deal specifically with such problems. As a matter of communications policy, bigness is not necessarily badness; and the public interest is not inconsistent with the profit motive.

I also question whether the Commission ought to be involved in a microscopic examination of every nook and cranny of a licensee's character especially where a licensee's actions do not produce a perceptible, adverse effect on the broadcast service provided to the public.

And more than anything else, I question whether there remains any longer a positive public purpose to be served by rules and policies that restrict your First Amendment rights to provide programming and viewpoints as you see fit. Without benefit of program guidelines, radio filled our need for diversion during the Great Depression, gave the American public the Fireside Chats of Franklin Roosevelt, and provided

for the American people to hear and force you to provide programming in response.

Let me add a short but important point about our ability to meet the needs of your audience. As a former broadcaster, I have never liked the Commission's content-oriented rules. When the FCC plays the censor of programming, it inhibits creative expression and the fullest exploration of ideas and attitudes. I would rather leave matters of taste to the discretion of the broadcaster, including the decision over whether a particular word should be heard or a sensitive subject discussed.

To summarize what I have been saying, if regulation is truly to be in the public interest, the definition of public interest must change with the times, embrace the new realities, and in the end be keyed to serving the public. I believe that the public has lost more than it has gained under the old regulatory pattern. The cost of regulation alone has been staggering. Not only has the taxpayer paid to keep the FCC enforcing a ton of outdated rules, the costs of compliance to the industries has been enormous. It is money that is taken from production or profits and wasted on unnecessary compliance with unneeded government rules.

Furthermore, when government undertakes to define -- in concrete rules -- the product that may be offered, consumer choice suffers; rigidity is substituted for diversity and creativity. The media must be allowed to find new ways to communicate without having to fit them into preconceived patterns drawn up in Washington. I think that newspapers, and magazines,

and book publishers, and the theatre, and record companies provide fresh, innovative and diverse material without "processing guidelines" and government policy statements. The public always benefits from an atmosphere of freedom and the incentives provided by marketplace competition.

And finally, the public will know that the regulations that are retained are those considered absolutely necessary to protect the public interest and will be enforced firmly. I would rather do a good job of enforcing fewer regulations that are essential than a superficial job of enforcing thousands of regulations, many of which have a tenuous connection to the public interest. The public will benefit from a cost-effective use of enforcement resources; and in an era of declining budgets, it is imperative that no government effort is wasted.

I know we have work ahead of us. And I know that our promises must be matched by our performance. Many difficult legal and economic issues do await us. And a new environment awaits you. I believe you will have much to gain in this new environment. And I know you will have much to offer. Thank you.